MAXICON SDN. BHD.

v.

M & S ENGINEERING CONSTRUCTION SDN. BHD. & 2 OTHER PARTIES

HIGH COURT MALAYA, IPOH
TUAN CHIN FOOK YEN JC
[CIVIL SUIT NO. 1999-84]
13 OCTOBER 1995

INJUNCTION: *Interim injunction granted to preserve status quo until judgment - Judgment obtained - Injunction maintained to levy execution of judgment debt - Whether allowed.*

The plaintiff brought an action against the defendant for work done and services rendered and on 3 November 1986 obtained judgment. On 17 June 1986, the plaintiff obtained an *ex parte* interim injunction restraining Sri Comm. Engineering Sdn. Bhd. (the applicant) from releasing to Malayan Banking Berhad (the intervener) all monies due to the defendant. By a deed of assignment, all monies due to the defendant by the applicant were agreed to be paid to the interveners. The plaintiff however maintained the injunction to levy execution of the judgment debt. The intervener applied to set aside the injunction.

Held:

Whatever the purpose the injunction was initially granted, the said injunction cannot be maintained any more since judgment had been obtained. The equitable remedy of injunction is not an appropriate relief to levy execution of a judgment debt on a person or company not being the judgment debtor.

[Application allowed with costs; injunction set aside].

Legislation referred to:
Rules of the High Court 1980, O. 45 r. 1
Specific Relief Act 1950, s. 54

For the plaintiff - M/s. K.L Choy & Co.
For the defendant - M/s. Raj Selva & Co.

JUDGMENT

Chin Fook Yen JC:

The plaintiff had commenced this action on 19 December 1984 and had on 3 November 1986 obtained a judgment of this Court against the defendant for work done and services rendered (the project).

In the meantime the plaintiff had on 17 June 1986 somehow obtained an *ex parte* interim injunction against, not the defendant but one company Sri Comm Engineering Sdn. Bhd. (the applicants) from whom the defendant had got the project to the effect that the applicants were restrained, *inter alia*, from releasing to Malayan Banking Berhad (interveners) all monies due to the defendant. At that point of time, all monies were to be deposited into the Court, but by consent of the parties, the monies were in fact put in fixed deposit.

The applicants had applied by Encl. 47:

(i) to intervene and

(ii) for directions as regard the monies in the fixed deposit,

whilst the interveners applied by Encl. 49:

(i) to intervene and

(ii) to set aside the said injunction.

The Court had allowed the parties to intervene in these proceedings. The Court is now left in respect of Encl. 47, to decide what directions to give as to the disposal of the fixed deposit and in respect of Encl. 49 to determine the application by the interveners to set aside the injunction.

I shall proceed to consider Encl. 49 first, for a good reason which shall become apparent in a moment. The relevant aspect of the injunction Encl. 45 as amended which is directed against the applicants only, so it seems reads as follows:

> that Sri Comm Engineering Sdn. Bhd., by their agents or servants or otherwise be ordered not to pay all monies claimed and due to the defendant or due but not claimed by the defendant to the Malayan Banking Berhad or any other bank or institution whether or any assignment or trust or agreement but that all those monies to be paid into this Honourable Court.

Directly the applicants are restrained from paying the monies to the interveners who had given loan to the defendant to finance the project and a deed of assignment was made between them whereby the monies due to the defendant by the applicants were agreed to be paid to the interveners. As the validity or otherwise of the assignment is not however an issue in the application I express no comment. It is better left to the Judge to decide the matter when hearing it. Right now the question is whether or not the injunction ought to be set aside.

As I understand it, the plaintiff had obtained injunction on 17 June 1986 for the purpose of preserving *status quo* until judgment which was obtained on 3 November 1986. By then the injunction would have served its purpose. The

plaintiff apparently is still maintaining the injunction for another purpose i.e. to levy execution of the judgment debt.

The next question is whether injunction is an appropriate remedy to levy execution of a judgment debt on a person or company not being the judgment debtor, as in this case. Under O. 45 r. 1 Rules of the High Court 1980, it is clear such a judgment may be enforced by one or more of the following means:

(a) writ of seizure and sale;

(b) garnishee proceedings;

(c) a charging order;

(d) the appointment of a receiver;

(e) in a case in which r. 5 applies, an order of commital.

The plaintiff had chosen not to have sought any of these remedies. Furthermore s. 54 of the Specific Relief Act, 1950 provides as follows:

An injunction cannot be granted:

(i) when an equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust.

In my view, whatever the purpose the injunction was initially granted, the said injunction certainly cannot be maintained any more, since judgment had been obtained. The equitable remedy of injunction is obviously not an appropriate relief.

I allow the application with costs. The *ex parte* interim injunction is set aside. In view of my decision the application in Encl. 47 has become unnecessary. I make no order thereof. I order the plaintiff to pay costs to both the applicants in respect of Encl. 47 and to the interveners.